

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento CA 95814

October 20, 1986



ALL-COUNTY LETTER No. 86-102

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: FOSTER CARE LIABILITY INSURANCE

The purpose of this letter is to provide information on foster care liability insurance provisions contained in Senate Bill (SB) 1159 which was recently signed by the Governor as an urgency statute. The State Department of Social Services (SDSS) has transmitted this notice to all licensed foster family homes listed on the Facilities Information System (FIS) as well as all small family homes for children licensed by the State. Attachment I contains a list of FIS counties. County welfare departments should ensure that all foster family homes currently licensed by the county which are not on the FIS and all applicants subsequently licensed receive information contained in this notice. The SDSS will send, under separate cover, copies of this notice for each non-FIS county to distribute to their licensees.

Research undertaken during the past several months revealed that the current insurance crisis has adversely affected some foster family homes and small family homes in various locales throughout the State. For some, homeowner's or tenant's insurance had become unavailable or available coverage excluded foster parent activities. In addition, foster parents in some areas were unable to obtain liability insurance coverage over and above homeowner's or tenant's coverage for claims filed against them by the foster child or his/her parents or guardian.

Recognizing these problems and the fact that foster parents provide a needed and important service, a cooperative effort by the SDSS, other state departments, the State Foster Parents' Association, County Welfare Directors' Association and key members of the Legislature resulted in passage of SB 1159 (Chapter 1330, Statutes of 1986) which does all of the following:

1. Commercial insurance carriers are prohibited from refusing to issue or cancelling foster parents' homeowner's or tenant's policies solely because there is a foster child in the home. Coverage for the foster child shall be the same as that provided for a natural child.

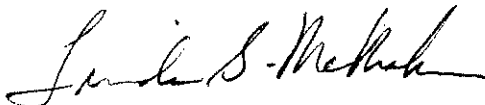
2. A foster parent cannot be sued for "alienation of affection." In other words, a natural parent cannot file a claim against the foster parent if the foster child develops a close relationship with the foster parent which the natural parent feels detracts from or destroys the relationship between the child and the natural parent.
3. The Foster Family Home and Small Family Home Insurance Fund is established within the SDSS to process, on behalf of licensed foster family and licensed small family homes, claims of foster children, their parents and guardians resulting from occurrences peculiar to the foster care relationship and the provision of foster care services. An example of a claim that may be submitted to the Fund includes a situation where the foster child is injured and the child's parent files a claim against the foster parent for negligent supervision. Coverage is limited to "gap" coverage only and will not supplant coverage normally offered under homeowner's or tenant's policies. This is true even if the foster parent has no basic homeowner's or tenant's coverage. In addition, certain acts are not covered, such as losses arising out of a criminal act on the part of the foster parent or bodily injury arising out of operation or use of a motor vehicle, aircraft or watercraft. Fund liability is limited to \$300,000 per home for occurrences during a single calendar year. The Fund becomes operational on October 1, 1986 and only covers actions occurring on or after that date. Attachment II provides further details on the Fund.

The SDSS will contract with the State of California Office of Insurance and Risk Management (OIRM) to operate the Fund and process claims. Should an incident occur where the Fund might have to respond because of a possible claim by a foster child, natural parent, guardian or guardian ad litem, immediate contact should be made with the OIRM at the address or telephone number shown below. The OIRM will evaluate the incident and, if there is claim potential, an incident report or a claim form will be requested. Attachment III further explains procedures for filing a claim. Questions regarding liability insurance coverage or claim filing procedures should be directed to:

Gene Marquart or Ralph Maurer  
State of California  
Office of Insurance and Risk Management  
926 J Street, Suite 615  
Sacramento, CA 95814  
(916)445-2184

4. The State Department of Insurance, in consultation with the State Department of Social Services, is responsible for submitting a report to the Legislature by January 1, 1988 to assess the availability of commercial liability insurance for licensed foster family and small family homes and making recommendations for the continued necessity for, or modification of, the measures authorized by the bill. The provisions contained in the bill expire June 30, 1988.

The Department of Social Services believes the legislative actions specified will provide immediate relief to foster parents and resolve the current crisis, thereby ensuring continued availability of placement resources for the State's foster care population. If you have any questions about the general provisions contained in SB 1159, please call Mr. Ritch Hemstreet, Chief, Family and Children's Services Policy Bureau at (916) 322-6333.



LINDA S. McMAHON  
Director

ATTACHMENT I

FACILITIES INFORMATION SYSTEM (FIS) COUNTIES

Del Norte  
El Dorado  
Imperial  
Inyo  
Kern  
Kings  
Mariposa  
Mendocino  
Monterey  
San Bernardino  
San Mateo  
Santa Barbara  
Shasta  
Siskyou  
Sutter  
Trinity  
Ventura

**FOSTER FAMILY HOME AND SMALL FAMILY HOME INSURANCE FUND**  
**CERTIFICATE OF COVERAGE**

The State of California, pursuant to Health and Safety Code Section 1527 et seq., provides a fund to pay for liability claims on behalf of foster parents for activities relating to licensed foster family homes and licensed small family homes.

**Period of Coverage:** Claims arising on or after October 1, 1986.

**Limit of Coverage:** \$300,000 per home for occurrences during a single calendar year.

**Coverages:** The fund will pay, on behalf of licensed foster family homes and licensed small family homes, claims of foster children, their parents, guardians, or guardians ad litem for damages arising from, and peculiar to, the foster care relationship and the provision of foster care services, or reimburse foster family homes and small family homes for those damages. The fund is liable, if a claim is approved, to pay on behalf of each licensed foster family home or licensed small family home, all sums which the licensed foster family home or licensed small family home is obligated to pay as a result of a valid claim of bodily injury or personal injury arising out of the activities of a foster parent or foster parents, which occurs while the foster child resides in the licensed foster family home or licensed small family home.

**Exclusions:** The fund shall not be liable for any of the following:

- (a) Any loss arising out of a dishonest, fraudulent, criminal, or intentional act.
- (b) Any occurrence which does not arise from the foster care relationship.
- (c) Any bodily injury arising out of the operation or use of any motor vehicle, aircraft or watercraft owned or operated by or rented or loaned to any foster parent.
- (d) Any loss arising out of licentious, immoral, or sexual behavior on the part of the foster parent intended to lead to, or culminating in, any sexual act.
- (e) Any allegation of alienation of affection against a foster parent.
- (f) Any loss or damage arising out of occurrences prior to October 1, 1986.
- (g) Exemplary damages.
- (h) Any liability of a foster parent which is uninsured due solely to the foster parent's failure to obtain insurance specified in Section 676.2 of the Insurance Code. Nothing in this subdivision shall be construed to expand the liability of the fund with respect to insured foster parents. Incidents covered by a homeowner's or tenant's policy are excluded from coverage under this fund, whether or not the foster home has such insurance.
- (i) Any damage to property.

**Who May File A Claim:** The following persons may file a claim against this fund: the foster child, the natural parents, the guardians, or the guardians ad litem. All other persons are excluded.

**Time Limit For Filing and Processing A Claim:** The Code of Civil Procedures Section 340 (et. seq.) provides that tort liability claims for bodily injury must be made within one year from the date of injury. Health and Safety Code Section 1527.6(c) states that, "the department shall approve or reject a claim within 180 days after it is presented." Section 1527.6(d) states, "No person may bring a civil action against a foster parent for which the fund is liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid, and damages in excess of the payment are claimed."

**How To Obtain A Claim Form:** Contact the Office of Insurance and Risk Management at the address below.

This certificate provides a summary of the terms and conditions of this fund only. For complete details of coverage contact:

State of California  
Office of Insurance and Risk Management  
926 J Street, Suite 615  
Sacramento, CA 95814      Telephone (916) 445-2184.

**FOSTER FAMILY HOME AND SMALL FAMILY HOME INSURANCE FUND**

**CLAIM FILING AND  
INCIDENT REPORTING PROCEDURES**

- (1) HOW A FOSTER CHILD OR OTHER AUTHORIZED CLAIMANT FILES A CLAIM AGAINST THE FOSTER FAMILY HOME AND SMALL FAMILY HOME INSURANCE FUND (FUND).

Claims must be timely and submitted in writing to:

State of California  
Office of Insurance and Risk Management  
926 J Street, Suite 615  
Sacramento, CA 95814      Telephone (916) 445-2184.

If a claim form is needed, contact the office at the above address.

In accordance with Health and Safety Code Sections 1527 et seq., claims may be made by the following persons: the foster child, the natural parents, the guardians, or the guardians ad litem. The fund will not be liable to any other persons. A claim will be approved or rejected within 180 days after it is presented.

- (2) HOW TO REPORT A POTENTIAL CLAIM AGAINST THE FUND OR PROVIDE INFORMATION ON A CLAIM.

Should an incident occur where there is possible liability to the Fund, the foster parent should contact the Office of Insurance and Risk Management by phone or letter at the address above. Should the Office of Insurance and Risk Management deem there is a potential claim, an incident report or claim form will be provided for completion.